

On June 6, 2007 appellant, then a 54-year-old lock and dam equipment mechanic leader, filed a traumatic injury claim alleging that on April 21, 2007 he sustained a slip disc in his back due to a C-130 airplane veering in flight while leaving from Baghdad, Iraq.

In an August 15, 2007 letter, the Office informed appellant that the evidence was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required to support his claim and given 30 days to provide this information. No evidence was received.

By decision dated September 26, 2007, the Office denied appellant's claim after finding that he did not establish that the April 21, 2007 work incident occurred at the time, place and in the manner alleged. It further found the record was devoid of any medical evidence establishing a condition.

On October 20, 2007 appellant requested reconsideration. In support of his request, he submitted medical and factual evidence including: his statement regarding the incident; a post-deployment health assessment, a job description; a September 14, 2007 attending physician's report (Form CA-20) and office notes dated August 31, September 14 and 26, October 15 and 30 and November 12 and 28, 2007 from Dr. Christopher H. Tashjian, an attending Board-certified family practitioner; a November 21, 2007 report from Dr. Vesselina Mateva, a treating Board-certified neurologist; and a September 25, 2007 report from Dr. Daniel W. Hanson, an examining Board-certified orthopedic surgeon.

In an undated statement, appellant noted that he flew out of Baghdad on a C-130 plane on April 21, 2007. During the flight, he felt something in his back when he reached to pick up his bag after sliding on the webbed bench due to a sharp dive followed by an upward thrust of the plane. Appellant related that when he arrived at Fort Bliss he could hardly walk and informed his doctors about his back problem. He stated that he went to a chiropractor the day following his return home on April 25, 2007.

In a September 14, 2007 Form CA-20, Dr. Tashjian diagnosed a herniated disc and low back pain and noted that appellant was injured on April 21, 2007 while flying back from Baghdad. He checked "yes" to the question as to whether the diagnosed condition was employment related and wrote "possibly" as an explanation.

In a September 25, 2007 report, Dr. Hanson, based upon a physical examination and review of lumbar magnetic resonance imaging (MRI) scans, diagnosed bilateral leg paresthesias, right leg pain, lumbar spondylosis and low back pain. He stated that the MRI scan revealed a "very mild central dis[c] herniation at the L4-5 level, which does not cause significant neurologic compression." As to the cause, Dr. Hanson related that appellant attributed his injury to leaving Baghdad on April 21, 2007 when the plane took evasive maneuvers when it came under attack. However, he stated that he could not "explain the exact etiology of his symptoms."

In treatment notes dated October 10 and 19, 2007, Dr. Tashjian diagnosed low back pain. He also diagnosed right-sided meralgia paresthetica on October 10, 2007 and lower extremity paresthesias on October 19, 2007. Dr. Tashjian noted that appellant felt low back pain almost immediately in April 2007 when he left Baghdad on a plane which "made some abrupt evasive maneuvers and the patient stretched and injured his back sliding backwards." A physical examination on October 10, 2007 revealed pain in the lumbar spine when he bent forward. On October 19, 2007 Dr. Tashjian reported that an MRI scan revealed multiple lumbar and sacral

area nerve root sleeve cysts which are unrelated to appellant's employment injury and normally asymptomatic in patients.

In a November 21, 2007 report, Dr. Mateva diagnosed low back pain and history of perineurial cysts (Tarlov cysts). She noted that appellant had no health problems until April 2007 when he fell and injured his back while in Baghdad. As to appellant's cysts, Dr. Mateva related that some studies described Tarlov cysts as becoming symptomatic following a back trauma. She stated that compression of the lumbar and sacral nerve root occurs as a result of buildup of cerebrospinal fluid in the cyst which can cause problems such as lower extremity pain and bowel, bladder or sexual dysfunction.

Appellant subsequently submitted progress notes dated September 14 and November 28, 2007 from Dr. Tashjian, a January 10, 2008 lumbar spine MRI scan, a January 10, 2008 total body bone scan, a January 10, 2008 computerized tomography (CT) lumbar scan and a January 10, 2008 progress note from Jill Goring, R.N.

Dr. Tashjian, in a September 14, 2007 progress note, diagnosed persistent low back pain and a herniated disc. On November 28, 2007 he diagnosed persistent back pain and status post fall. Dr. Tashjian noted "[t]here is some concern over these cysts causing his back pain."

On January 10, 2008 Ms. Goring noted that appellant was referred for a neurosurgery consultation and that he had injured his back on April 21, 2007 during a flight from Baghdad. She reported that appellant had complaints of back pain radiating bilaterally into his legs since April 2007.

By decision dated February 1, 2008, the Office modified the September 26, 2007 decision to reflect that appellant had established that the April 21, 2007 incident occurred as alleged. However, it found that the medical evidence was insufficient to show that appellant sustained a medical condition due to the established work incident and, thus, affirmed the denial of his claim as modified.

On February 19, 2008 appellant requested reconsideration. In support of his request, he submitted medical evidence including: a November 19, 2007 emergency room treatment note from Hudson Hospital; a February 8, 2008 report from Dr. Tashjian; a February 18, 2008 report from Dr. Ronald Nyeggen, a chiropractor; an MRI scan; a November 21, 2007 report from Dr. Mateva and electromyogram studies dated October 26, 2007.

On February 8, 2008 Dr. Tashjian noted that appellant initially saw a chiropractor following the April 21, 2007 incident and that he has seen appellant for back problems since he first saw him in July 2007. In concluding, he opined that "[w]ith this additional history it seems clear to me that his current problems are related to the injury of [April] 21, 2007 within a reasonable degree of medical certainty."

In a February 18, 2008 report, Dr. Nyeggen, a chiropractor, stated that he first saw appellant on April 26, 2007 when he "was in an obvious severe low back pain while in an antalgic position." Appellant related injuring his lower back on April 21, 2007 when the plane he was riding in performed an abrupt maneuver. Dr. Nyeggen opined that appellant has not recovered from the injury sustained on April 21, 2007.

By decision dated May 22, 2008, the Office denied appellant's request for modification of the denial of his claim.

Subsequent to the decision, the Office received a June 11, 2008 report from Dr. Mark V. Larkins, a treating Board-certified neurosurgeon, who opined that appellant's back condition "may have been proximal nerve root compression or potentially facet injury" as a result of "the rapid loss of altitude of the plane in which he was traveling." Since the injury, appellant had severe low back pain. Based on the reporting of events and the employment injury history, Dr. Larkins opined that appellant's condition was temporarily related to his service in Iraq.

On June 24, 2008 appellant requested reconsideration and submitted medical and factual evidence in support of his request. The medical evidence consists of: an April 8, 2008 lumbar MRI scan; a September 25, 2007 report from Dr. Hanson; an August 29, 2008 lumbar discography procedure note; an April 9, 2008 lumbar bone scan; an April 8, 2008 lumbar CT scan; a June 11, 2008 report and progress notes dated May 9 and 20, 2008 from Dr. Larkins. In a May 9, 2008 progress note, Dr. Larkins reported that appellant injured his back on April 21, 2007 during a flight from Baghdad and provided physical findings and a treatment plan without any diagnosis. In a May 20, 2008 progress note, he reported findings from the objective testing and physical examination. Dr. Larkins stated: "[t]he mechanism of the extreme dive of the transport plane in Iraq is entirely consistent [w]ith his current complaints and possible facet injury."

By decision dated November 24, 2008, the Office denied appellant's request for modification of the denial of his claim.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

¹ The Board notes that, following the November 24, 2008 Office decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c); *J.T.*, 59 ECAB ____ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

² 5 U.S.C. §§ 8101-8193.

³ *C.S.*, 60 ECAB ____ (Docket No. 08-1585, issued March 3, 2009).

⁴ *S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁵ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰

ANALYSIS

Appellant alleged that he sustained an injury to his back when the C-130 airplane he was flying in veered in flight while leaving from Baghdad, Iraq. The Office accepted that the incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that he sustained an injury as a result of this incident.

The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a low back injury causally related to the April 21, 2007 work incident. Appellant did not submit a rationalized medical report from an attending physician addressing how the April 21, 2007 airplane incident may have caused or aggravated his claimed condition.

The medical evidence of record consists of reports and notes from Drs. Hanson, Larkins, Mateva and Tashjian. Appellant also submitted a report from Dr. Nyeggen, a chiropractor, MRI scans, bone scans and a discography procedure note. On September 25, 2007 Dr. Hanson diagnosed bilateral leg paresthesias, right leg pain, lumbar spondylosis and low back pain. He stated that appellant attributed his injury to leaving Baghdad on April 21, 2007 when the plane took evasive maneuvers when it came under attack, but that he was unable to "explain the exact

⁵ *B.F.*, 60 ECAB ____ (Docket No. 09-60, issued March 17, 2009).

⁶ *D.B.*, 58 ECAB ____ (Docket No. 07-440, issued April 23, 2007).

⁷ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008); *D.G.*, 59 ECAB ____ (Docket No. 08-1139, issued September 24, 2008).

⁸ *Y.J.*, 60 ECAB ____ (Docket No. 08-1167, issued October 7, 2008); *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006).

⁹ *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

¹⁰ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

etiology of his symptoms.” The Board has held that medical evidence which provides no opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹¹ Dr. Hanson’s September 25, 2007 report does not address causal relationship and therefore is not probative or effective in establishing appellant’s claim.

Appellant also submitted various reports dated between November 9, 2006 and February 8, 2008 diagnosing low back pain and noting that appellant had no back problems until after the April 21, 2007 incident. Dr. Tashjian’s various reports are of little probative value on the issue of causal relationship because they lack an opinion on the causal relationship between a medically-diagnosed condition and the identified employment incident. While he diagnosed appellant with low back pain, he provided no explanation concerning how the identified April 21, 2007 employment incident caused this condition. Reports lacking an opinion on causal relationship are of little probative value.¹² Furthermore, pain is a symptom and not a compensable medical diagnosis.¹³ These deficiencies reduce the probative value of Dr. Tashjian’s notes and reports and, therefore, they are insufficient to satisfy appellant’s burden of proof.

Appellant also submitted a September 14, 2007 attending physician’s form in which Dr. Tashjian diagnosed a herniated disc and low back pain. As to causation, Dr. Tashjian checked “yes” to the question of whether the diagnosed conditions were employment related and noted “possibly” as the explanation. The Board has held that, when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹⁴ Thus, this report is insufficient to support appellant’s burden of proof.

Similarly, Dr. Mateva’s November 21, 2007 report is insufficient to meet appellant’s burden of proof. She diagnosed low back pain and history of perineurial cysts (Tarlov cysts) and noted that appellant had no health problems until April 2007 when he fell and injured his back while in Baghdad. As to appellant’s cysts, Dr. Mateva related that some studies described Tarlov cysts as becoming symptomatic following a back trauma. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic is insufficient, without greater rationale, to establish causal relation.¹⁵ Consequently, the Board finds that this evidence is insufficient to establish appellant’s claim.

Appellant also submitted a June 11, 2008 report and progress notes dated May 9 and 20, 2008 from Dr. Larkins. On June 11, 2008 Dr. Larkins stated that appellant may have sustained a facet injury or proximal nerve root compression due to the plane’s rapid loss of altitude. He

¹¹ *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

¹² See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹³ *C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008).

¹⁴ *D.D.*, 57 ECAB 734 (2006).

¹⁵ *Michael S. Mina*, 57 ECAB 379 (2006).

noted that since the injury appellant had severe low back pain. In concluding, Dr. Larkins opined that appellant's condition was temporarily related to his service in Iraq based on the employment incident history and reporting of events. In treatment notes dated May 9 and 20, 2008, he reiterated his opinion that appellant's condition was due to the April 21, 2007 employment incident. As noted above, the mere fact that appellant was asymptomatic prior to the injury is insufficient, without rationale, to establish that the condition is causally related to the accepted employment injury. Furthermore, Dr. Larkins provided insufficient medical rationale explaining the mechanism by which the April medical rationale is of little probative value.¹⁶ Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

In a February 18, 2008 report, Dr. Nyeggen diagnosed severe low back pain which he attributed to the April 21, 2007 injury when the plane appellant was riding in performed an abrupt maneuver. There is no indication as to whether Dr. Nyeggen reviewed x-rays or made diagnosis of a spinal subluxation based upon a review of x-rays. The Board finds that he is not a physician as a chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.¹⁷

Appellant also submitted MRI scans, bone scans, a discography procedure note and a January 10, 2008 report from Ms. Goring, a registered nurse, in support of his claim that he sustained a back condition on April 21, 2007. Reports of diagnostic testing submitted by appellant do not offer any opinion on causal relationship between the diagnosed medical condition and the April 21, 2007 employment incident. As to Ms. Goring's report, the Board has held that nurses are not physicians under the Act and are not competent to render a medical opinion.¹⁸ Thus, these reports are of no probative value in establishing his traumatic injury claim.¹⁹

CONCLUSION

The Board finds that appellant has not satisfied his burden of proof to establish that he sustained an injury in the performance of duty on April 21, 2007 causally related to his employment.

¹⁶ *Caroline Thomas*, 51 ECAB 451 (2000).

¹⁷ See 5 U.S.C. § 8101(2) (the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist); see also *A.O.*, 60 ECAB ____ (Docket No. 08-580, issued January 28, 2009); *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁸ *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007).

¹⁹ *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007).

ORDER

IT IS HEREBY ORDERED THAT the November 24 and May 22, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 23, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board